

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5699

PETITION OF RANDALL R. MYERS AND SHIRLEY SHULTZ MYERS

(Hearing held January 16, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, February 15, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(1). The petitioners propose to construct a one-story addition that requires a six (6) foot variance as it is within two (2) feet of the side lot line and a fourteen (14) foot variance as it reduces that sum of both side yards to eleven (11) feet. The required side lot line setback is eight (8) feet and the required sum of both side yards is twenty-five (25) feet.

Mary Joan Comstock, the adjoining neighbor on Lot 71, appeared in opposition to the variance request.

The subject property is Lot 70, Block B, Tanglewood Subdivision, located at 3128 Memory Lane, Silver Spring, Maryland, in the R-90 Zone (Tax Account No. 02211727).

Decision of the Board: Requested variances **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 20 x 20 foot one-story addition in the eastern side yard. The petitioner testified that the addition would provide living space for a sick, elderly relative.
2. The petitioner testified that the addition could not be built in the western side yard because the distance between the residence and the property line would not be adequate. The petitioner testified that the addition could not be located in the rear yard because it would require the removal of the existing deck and patio and that an addition to the rear of the house would be awkward coming off of the kitchen.
3. The petitioner testified that the rear of her property backs up to a 100 Year Flood Plain easement and that a number of homes form a ring around the 100 Year Flood Plain area. The petitioner testified that the addition would be in harmony with similar improvements in the neighborhood.
4. In response to questions from the Board, Ms. Myers stated that an easement exists between her lot and Ms. Comstock's lot as shown on Exhibit No. 8.

5. Ms. Comstock testified that she was sympathetic to the petitioner's needs, but that the proposed construction would impact the use and value of her property. Ms. Comstock testified that the proposed addition would decrease the open space between the two houses and would obstruct the access to the wetland area located at the rear of the two properties.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Sections 59-G-3.1(a), (b) and (d) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot has no exceptional or other topographical conditions that are not shared by the neighboring properties. The Board finds that the property's existing conditions do not prohibit construction in other areas of the lot.

The Board notes that the zoning vicinity map shows no other variances in the immediate neighborhood and that the improvements to the neighboring homes did not require variances.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions

The Board finds that the addition, as proposed, is not the minimum reasonably necessary.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the petitioner's property is consistent in shape and size with the other lots in the immediate neighborhood, as shown on Exhibit No. 8, and that the addition would materially impact the use and enjoyment of the adjoining property owner.

The petition does not meet the requirements set forth in Section 59-G-1.3 of the Zoning Ordinance. Accordingly, the requested variances of six (6) from the required eight (8) foot side lot line setback and of eleven (11) feet from the required twenty-five (25) foot sum of both side yards for the construction of a one-story addition are denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 15th day of February, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.